IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 83 of 2005
With
CIVIL APPLICATION No. 3964 of 2005
In
SECOND APPEAL No. 83 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTABEN CHHOTALAL SHAH - Appellant(s)
Versus
NANALAL KALIDAS SHETH - Defendant(s)

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Appearance :
MR DK ACHARYA for Appellant(s) : 1,
MR HRIDAY BUCH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/09/2006

ORAL JUDGMENT

1. The appeal is admitted for hearing on the following substantial question of law;

(i) Whether on the facts and in the circumstances of the case, the appellant is entitled to an injunction that the respondent is not entitled to evict her, except by taking a process known to law or in accordance with law?.

2. With the consent of the parties, the matter is finally heard.

3. The appellant filed Regular Civil Suit No.13 of 1986 inter-alia submitting that in view of the certain disputes between the appellant and her husband – Chhotalal Shah, she was given one of the house for her residence and as she was residing in the house. Her husband or her Father-in-law either personally or through the help of any agency, could not dispossess her. The defendant appeared before the Court and submitted that the suit

property was leased out to one Jayantilal, who evicted the premises in favour of the defendant, but taking the advantage of the situation, the plaintiff forcibly entered in the house and after a report was lodged against her illegal act, she had filed the suit seeking injunction. The suit was registered as Regular Civil Suit No.13 of 1986. The defendant prayed for dismissal of the suit. The suit was finally decreed on 30/12/1995 by the learned Civil Judge (JD), Deesa, restraining the defendant from interfering with the plaintiff's possession. The defendant being aggrieved by the said judgement and decree, took up the matter in appeal. The appellate Court on re-appreciation of the evidence came to the conclusion that the plaintiff has miserably failed to prove as to how she entered into the possession of the property, that house could not be given to the plaintiff for residence, as it did not belong to her husband, but was personal property of her Father-in-law, who died during the pendency of the proceedings, after leaving a Will in favour of the another brother of the husband. It accordingly set aside the judgement and decree passed by the learned trial court. The plaintiff being aggrieved by the said judgement and decree is now before this Court.

4. Mr.Acharya, learned counsel for the appellant submits that the suit was filed in the year 1986, immediate steps for dispossession were not taken nor any action for dispossession was taken in accordance with law and as the plaintiff is admittedly in possession, she would be entitled to an injunction against her illegal dispossession.

5. Mr.Buch, learned counsel for the defendant on the other hand submits that a person who is in illegal possession or who is unable to show that the entry was legal or became illegal after some time or they had some right to enter upon the land / property, an injunction in favour of the trespasser who, exploiting the situation, comes to the court within a short-while of the illegal act, cannot be granted.

6. After hearing the parties, I am of the considered opinion that the plaintiff / appellant who happens to be in possession for almost about 20 (twenty) years either under the interim orders passed by the Court or because of the final judgement, now cannot be allowed to be dispossessed, especially when the defendant has not

taken any action known to law for dispossession of the plaintiff. The other findings that the entry of the plaintiff in the suit house was illegal and that she has no rights in the property including the right of residence, as recorded by the learned court below, in the opinion of this Court, cannot be faulted with, those are accordingly confirmed, but in any case, the defendant cannot be allowed to take law in his hands and dispossess the plaintiff in a manner not known to law.

7. The defendant, however, would be entitled to take legal action against the plaintiff for her dispossession and recovery of possession on the strength of his title. It is also made clear that though the possession is with the plaintiff in this litigation, wherein the defendant has faced and suffered an injunction, the same would not be treated to be adverse possession in favour of the present plaintiff.

8. The appeal is allowed in favour of the plaintiff with a direction that the plaintiff cannot be dispossessed by the defendant either personally or through any agency, except in accordance with law, but, however, he would be

free to take appropriate steps before appropriate forum in accordance with law. The appeal to the extent indicated above is allowed. No costs. The parties to bear their own costs through out.

9. In view of the final disposal of the Second Appeal, Civil Application 3964 of 2005 stands disposed of.

(R.S.GARG,J.)

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